IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9396 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

INDOCEM INDUSTRIES -THROUGH ITS PAH-

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9396 of 2004

MRS KANAN R SHAH for Petitioner No. 1

MR RAVINDRA SHAH for Petitioner No. 1

MR MR MENGDEY A.G.P. for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 02/11/2004

ORAL JUDGEMENT

1. In this petition the petitioner has challenged the order dated 14th July 2004 passed by the respondent

no.1 confirming the order of respondent no.1 whereby the property has been valued at Rs.52,28,761/- and the petitioner was called upon to deposit the remaining amount of Rs.5,29,622/- as deficit stamp duty.

2. The petitioner purchased a plot of M/s Denova Bath Tubs Pvt Ltd. for a total sale consideration of Rs.5 lacs. The petitioner has thereafter approached the respondent authorities for getting the aforesaid sale deed registered.

3. A notice dated 26.8.2003 was issued to the petitioner by the respondent calling upon the petitioner to show-cause as to why the property should not be valued at Rs.52,28,761/- and deficit stamp duty recovered from the petitioner. Petitioner replied to the said notice on 25.9.2003. Thereafter on 8th March 2004 the respondent no.2 issued a notice to the petitioner and thereafter passed an order dated 31.5.2004/5.6.2004 whereby the property has been valued at Rs.52,28,761/- and the petitioner was called upon to deposit the remaining amount of Rs.5,29,622/- as deficit stamp duty.

4. The petitioner filed an appeal before the respondent no.2 who by his order dated 14.7.2004 rejected the appeal. Therefore the petitioner has filed the present petition.

5. Mr. Shah learned advocate for the petitioner contended that pursuant to the notice at annexure-C, dated 26th August, 2003, the petitioner had filed his reply on 25th September, 2003 (Annexure-B). The petitioner has specifically contended that he had purchased the property by specifically inviting orders. He further contended that the respondent authority without considering the reply and without hearing the petitioner, had passed the order, which is in gross violation of the principles of natural justice. Even otherwise also, the petitioner was not allowed to produce the documents while hearing. In fact, no hearing was given to the petitioner and the order was passed.

6. I have heard the learned advocate for the respective parties and have perused the relevant record. I find force in the submission of learned advocate for the petitioner, that the order is passed without hearing and without considering the reply of the petitioner. Thus, only on that ground, the order of the Deputy Collector, Gandhinagar, is required to be quashed and set aside and the matter is required to be remanded to respondent no. 2 for fresh decision.

7. In the premises aforesaid, on the facts and circumstances of the case, the petition is allowed. The impugned orders at annexure-A and F to the petition are quashed and set aside. The matter is remanded to respondent no. 2 for deciding the same afresh. However, it is, directed that respondent no. 2 shall issue notice for hearing and shall allow the petitioner to adduce evidence. After considering those documents, the Deputy Collector respondent no.2 herein shall hear the matter afresh after giving opportunity of hearing and shall pass appropriate orders, with reasons justifying the value assessed by the authority.

8. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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